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CITY OF TUKWILA
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DATE

4-20-09

Council Review
SMP Update**FACSIMILE TRANSMITTAL**

April 20, 2009

To:	Company:	Telephone:	Fax:
Tukwila City Council	City of Tukwila	(206) 433-1800	(206) 433-1833

EXHIBIT

3

PROJECT NAME

FILE NO

From: Molly Lawrence**Number of Pages:** 3

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Regarding: Comments on City of Tukwila
Shoreline Master Program Update**We are transmitting the following:****Comments:** Attached is a comment letter regarding the City's Shoreline Master Program Update.cc- Clerk
DED

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April 20, 2009

VIA FAX AND U.S. MAIL

Members of the City of Tukwila City Council
c/o City of Tukwila City Clerk
6200 Southcenter Blvd.
Tukwila, WA 98188

Re: Comments on City of Tukwila Shoreline Master Program Update
(City Council public hearing - April 20, 2009)

Dear City Council Members:

We represent Walton CWWA Tukwila 1, LLC¹, which owns property in the City of Tukwila along the Green River. The property is developed with a number of existing commercial/light industrial buildings occupied by a variety of tenants.

Walton is concerned that the City's proposed Shoreline Master Program ("SMP") update, as recommended by the Planning Commission, does not comply with applicable legal requirements and does not adequately protect the interests of property owners with existing developments.

Walton is particularly concerned with the proposed 125-foot buffer that would apply to its property. To the extent that portions of Walton's existing buildings may be located within that buffer and would become nonconforming upon adoption of the proposed SMP update, the Planning Commission's draft does not provide sufficient assurance that Walton will be able to continue to use and operate those buildings over the long term.

We know that other parties have addressed this issue and have suggested proposed language to address it. We urge the City Council to adopt language ensuring that, where existing buildings are located in the buffer area, the uses within the buildings can be continued, changed, expanded, etc., consistent with reasonable commercial requirements. No purpose is served by unduly restricting the ability of property owners to re-lease space in such buildings as long as the owners are continuing to maintain the buildings.

In addition, Walton believes that the legal basis for the City's imposition of the proposed buffers is flawed. The evident purpose of the 125-foot buffer is to provide space for

¹ Walton CWWA Tukwila 1, LLC, is a Delaware limited liability company.

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reconstruction of the levees at a gentler slope. A buffer requirement predicated on reconstruction of the levees (which will occur, if at all, at some undetermined future time, quite possibly after Walton's property is redeveloped) is not directly related to future development on Walton's property. Moreover, the levees provide protection to a huge area in the valley beyond Walton's property.

Under these circumstances, the proposed buffers violate RCW 82.02.020 and Walton's right to substantive due process and other constitutional rights. Moreover, even apart from the foregoing, RCW 82.02.020 precludes the City from imposing uniform buffers of the kind proposed, which are not directly related to the impacts of development on a particular property. *Citizens Alliance for Property Rights v. Ron Sims*, 145 Wn. App. 649, 187 P.3d 786 (2009), review denied, 203 P.3d 378 (2009). Even if the proposed buffers were justifiable in concept, they would need to be determined on a site specific basis.

We appreciate your consideration of these issues and urge the Council to redouble the City's efforts to work with property owners to come up with a mutually acceptable SMP that complies with applicable legal requirements.

Very truly yours,



Molly Lawrence

cc: Client